

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GOPI VEDACHALAM and KANGANA BERI,  
on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

TATA CONSULTANCY SERVICES, LTD,  
an Indian Corporation; and TATA  
SONS, LTD, an Indian Corporation,

Defendants.

No. C 06-0963 CW

ORDER DENYING  
WITHOUT PREJUDICE  
PLAINTIFFS' MOTION  
FOR SUMMARY  
JUDGMENT AND  
GRANTING  
DEFENDANTS' MOTION  
PURSUANT TO RULE  
56(D) (Docket Nos.  
281 and 288) AND  
SETTING FURTHER  
CASE MANAGEMENT  
CONFERENCE

Plaintiffs Gopi Vedachalam and Kangana Beri move for partial summary judgment on behalf of the National and California classes against Defendants Tata Consultancy Services, Ltd., and Tata Sons, Ltd. Defendants move to stay or deny Plaintiffs' motion for partial summary judgment pursuant to Federal Rule of Civil Procedure 56(d).

Having considered the parties' papers, the Court GRANTS Defendants' Rule 56(d) motion and DENIES Plaintiffs' motion for partial summary judgment without prejudice to re-filing when both parties are prepared to file cross-motions for summary judgment. Rule 56(d) "should be applied with a spirit of liberality" to prevent injustice to the party facing summary judgment. Buchanan v. Stanships, Inc., 744 F.2d 1070, 1074 (5th Cir. 1984). Here, Defendants have identified certain extrinsic evidence that may be relevant to show whether the contract is reasonably susceptible of the meaning that they urge, which the Court must provisionally receive under California law. See First Nat'l Mortg. Co. v. Fed.

1 Realty Inv. Trust, 631 F.3d 1058, 1067 (9th Cir. 2011).

2 Defendants have also identified evidence which may be relevant to  
3 their affirmative defenses. While discovery has been underway in  
4 this case for a period of time and discovery was not formally  
5 bifurcated, it is reasonable that the parties focused first on  
6 discovery relevant to class certification prior to the Court's  
7 resolution of that issue, and shifted their focus to merits  
8 discovery after the Court issued its order certifying classes to  
9 prosecute certain claims in this case.

10 Further, the Court notes that, were it to consider the merits  
11 of Plaintiffs' motion for partial summary judgment at this time,  
12 the state of the record at this time would incline the Court to  
13 deny the motion, at least in part. While Plaintiffs assert that  
14 Defendants' "practice was to deduct the amount of the employees'  
15 Indian salary from their gross U.S. compensation every month,"  
16 Mot. at 6, there appears to be a material dispute of fact as to  
17 whether Defendants deducted employees' Indian salary from their  
18 gross United States compensation or from their total gross  
19 compensation, and whether the latter practice was authorized by  
20 the employment contracts.

21 The Court sets a further case management conference for  
22 August 29, 2012 at 2:00 p.m. to set the remaining dates in this  
23 case.

24 IT IS SO ORDERED.

25  
26 Dated: August 3, 2012

27   
28 CLAUDIA WILKEN  
United States District Judge